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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,036	07/11/2003	Gabi Ben-Ami	3015/1	3068

7590                    09/01/2005

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/617,036	BEN-AMI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephen J. Castellano	3727	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 19 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-10 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,10 and 24 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,6-9,20-23 and 25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                         |                                                                             |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.                                               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                         | 6) <input type="checkbox"/> Other: _____.                                   |

Claims 11-19 have been canceled.

Claims 3, 5, 10 and 24 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 4, 2005.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-9 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Nohara et al. (Nohara).

Nohara discloses an unstable receptacle (bottle) for storing and dispensing a carbonated beverage, a lid is placed on the neck finish of the bottle to seal the beverage within the bottle. The container has a hemispherical shaped base. The height of the bottle appears to be high enough that the center of gravity is above the center of curvature of the hemispherical base.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 4, 6 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nohara in view of Esposito and Diekhoff et al. (Diekhoff).

Nohara discloses the invention except for the non-resealable seal and the receptacle being a metal can. Esposito teaches a metal can with a non-resealable pull tab closure that is adapted to become a bottle by attaching a bottle spout, the bottle spout is removable for adapting the bottle to become a metal can. Diekhoff teaches a metal can with the shape of a bottle. It would have been obvious to modify the shape of the bottle to be the shape of a metal can as taught by Esposito's use an adapter. It would have been obvious to call a bottle shaped receptacle a can as taught by Diekhoff. It would have been obvious to modify the material of a laminated polyester bottle to be metal as taught by Esposito and Diekhoff as a stronger and durable material and as a better gas barrier as taught at column 1, lines 64-69 of Nohara.

Re the non-resealable seal. Official notice is taken of well known ring pull closures for bottles. It would have been obvious to modify the closure to be a non-resealable ring pull closure in order to provide easy opening of the bottle.

Claims 1, 2, 4, 6-9, 20-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esposito in view of Nohara.

Esposito discloses a metal can with a stable bottom. Esposito discloses the invention except for the unstable rounded bottom and a ring-pull closure. Nohara teaches an unstable hemispherical shaped bottom. It would have been obvious to modify the bottom to be a rounded downwardly projecting hemisphere in order to increase the volume of the receptacle over a flat, non-downwardly extending bottom and an inwardly and upwardly extending concave bottom. Applicant admits that ring-pull closures are known for beverage cans in the statement made at page 1, lines 8-10 of the specification. Furthermore, applicant did not seasonably challenge the

Official notice taken in the last Office action and therefore admits that ring pull closures are well known.

Applicant's arguments with respect to claims 1, 2, 4, 6-9, 20-23 and 25 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

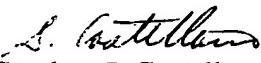
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc